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**Re: MB Docket No. 03-15: WPCW-DT (BPCDT-20060510AAI),
Request for Waiver of Interference Protection Deadline**

Dear Mr. Maher:

June 29, 2006

On behalf of WPCW-DT, Jeannette, Pennsylvania ("station"), CBS Corporation ("CBS")¹ hereby respectfully requests a waiver of the July 7, 2006² "use it or lose it" deadline for construction of digital facilities adopted by the Federal Communications Commission ("Commission" or "FCC") in its *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd 18279 (2004) ("*Second Periodic Review*").

Under the deadline, the affected digital stations³ are to forfeit interference protection to any unserved portions of their authorized service areas unless, by July 7, 2006, they construct either (i) their full authorized digital facilities (if they have received a tentative channel designation on their currently assigned digital frequency), or (ii) facilities that serve at least 80 percent of the number of viewers served by their 1997 replication facility (if they have received a

¹ CBS is the corporate parent of Pittsburgh Television Station WPCW Inc. ("Pittsburgh Television"), the licensee of WPCW.

² The Commission extended the above deadline from July 1, 2006 to July 7, 2006. *See, Public Notice*, MB Docket No. 03-15, DA 06-1372 (released June 29, 2006).

³ The July 7, 2006 deadline is applicable to stations other than those affiliated with one of the four major networks in the top 100 television markets. Those stations were subject to an earlier deadline of July 1, 2005.

tentative DTV channel designation on a channel that is not their currently assigned digital frequency).⁴

In the *Second Periodic Review*, the Commission stated that it would “establish a limited waiver process and grant extensions of the applicable replication or maximization interference protection deadline” where a station is “unable to provide the required service by [the relevant] deadline[] due to . . . circumstances beyond [the] station’s control.” 19 FCC Rcd. at 18319-19. The circumstances that have prevented WPCW-DT from constructing its full authorized facilities, or those meeting the alternate replication requirement, unquestionably meet the above criterion.

The facts are as follows. In 1996, Venture Technologies Group, Inc., the prior licensee of WPCW,⁵ filed a petition for proposed rule making to change the station’s allotment on Channel 19 from Johnstown to Jeannette, Pennsylvania. The Commission adopted the proposed reallocation, finding that it would serve the public interest by “provid[ing] [Jeannette] with its first local television broadcast service.”⁶ In view of these findings, the Commission amended the Table of Allotments to reallocate NTSC Channel 19 from Johnstown to Jeannette. However, the subsequently-released DTV Table of Allotments was not updated in light of this amendment. Thus, the DTV Table did not reflect the reassignment of Channel 30 –which was the paired digital allotment for Channel 19 – from Johnstown to Jeannette.

⁴ WPCW falls in the latter category, having received a tentative DTV channel designation of Channel 49 as a substitute for its currently assigned DTV frequency Channel 30.

⁵ The station’s call letters at the time were WTWB-TV. For much of the period described above, its call letters were WNPA. For convenience, we will refer to the station by its present call letters, WPCW, in this filing.

⁶ *See, Report and Order, Johnstown and Jeannette, Pennsylvania*, MM Docket No. 97-96, 12 FCC Rcd 10300 (1997) (“*Johnstown/Jeannette R&O*”).

On August 25, 1999, CBS – by that time the licensee of WPCW⁷ – filed a Petition for Rulemaking to amend the DTV Table of Allotments to substitute Channel 49 for Channel 30 as the station’s DTV frequency.⁸ In this petition, CBS noted that the DTV Table had not been updated to reflect the change in WPCW’s community of license. More substantively, the petition explained that, because of its co-location with the first adjacent allotment of WWCP-DT on Channel 29, WPCW-DT was unable to move its transmitting site from its existing location – approximately 42 kilometers from Jeannette with significant intervening terrain – to one closer to its community of license. The petition urged that a channel change would eliminate this obstacle to improved service to Jeannette.

On August 14, 2001, CBS filed a further amendment to its rulemaking petition which, *inter alia*, specified a new proposed transmitting site.⁹ Thereafter, on October 23, 2001, the Commission released a *Notice of Proposed Rulemaking* (“NPRM”) proposing to adopt the requested channel change.¹⁰

The above rulemaking, however, was never completed, apparently because the Federal Register declined to publish it, which in turn was due to the earlier error that had caused the Federal Register to fail to publish the change in allotment

⁷ The above reference to CBS as the station’s licensee in 1999 is made for purposes of convenience. In fact, the station’s licensee at the time was Viacom Inc., which acquired CBS Corporation less than a year after the date in question. Subsequently, on December 31, 2005, Viacom Inc. (“Old Viacom”), the ultimate owner of WPCW, effected a corporate reorganization in which its name was changed to CBS Corporation, and certain other businesses owned by Old Viacom were spun off into an independent, publicly traded corporation, which was given the Viacom name (“New Viacom”). Thus, CBS Corporation is now the parent company of Pittsburgh Television, WPCW’s licensee, and the station’s ultimate owner. In this filing, we will refer to CBS as both the ultimate owner of WPCW and as its licensee.

⁸ See, *Petition for Rulemaking and Request for Expedited Action of Paramount Stations Group of Pittsburgh Inc.*, filed August 25, 1999.

⁹ *Amended Petition for Rulemaking and Request for Expedited Action of Paramount Stations Group of Pittsburgh Inc.*, filed August 14, 2001.

¹⁰ See, *Notice of Proposed Rulemaking, In the Matter of Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations. (Jeanette, Pennsylvania)*, 16 FCC Rcd 18746 (2001).

from Johnstown to Jeannette.¹¹ It was not until February 17, 2005, that the Commission began a new rulemaking proceeding, in which it proposed to amend the DTV Table by substituting DTV Channel 49 for DTV Channel 30 at Johnstown, Pennsylvania, and reallocating DTV channel 49 from Johnstown to Jeannette, Pennsylvania.¹²

On April 4, 2005, comments opposing this proposal to amend the DTV Table were filed by Larry L. Schrecongost (“Schrecongost”), licensee of Class A television station WLLS-LP, Indiana, Pennsylvania, to which CBS filed reply comments on April 19, 2005. In a *Report and Order*¹³ issued on February 15, 2006, the Commission adopted the proposed amendments to the DTV Table, with an effective date of April 3, 2006.

On March 24, 2006, Schrecongost filed a petition for reconsideration of the *Report and Order*. On May 10, 2006, CBS filed an application for construction permit (the “application”) to build the digital facilities authorized for WPCW by the *Report and Order*. On June 1, Schrecongost filed a petition to deny that application and, on June 8, filed a motion to stay “any action on the above-referenced application until such time as Commission action with respect to the *Report and Order* . . . becomes final.”¹⁴ On June 21, CBS filed an opposition to, and motion to dismiss, both of these filings by Schrecongost.

As is apparent from the above, CBS has been in no way dilatory with respect to construction of WPCW’s digital facilities. Almost six years ago, it filed a Petition for Rulemaking seeking a change in its digital allotment that it urged would permit significantly improved service to its community of license. The Commission found sufficient merit in CBS’s several petitions to twice issue

¹¹ The above is based on an explanation given by Video Division personnel to CBS representatives in response to queries as to the status of the rulemaking.

¹² WPCW-DT elected channel 49 as its post-transition digital channel on February 10, 2005, in accordance with the instructions to FCC Form 382 authorizing the election of a substitute DTV channel when a Notice of Proposed Rulemaking to implement the change had been issued by the Commission. The Commission subsequently granted WPCW a tentative designation of Channel 49 as its permanent DTV frequency.

¹³ *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Johnstown and Jeanette, Pennsylvania)*, MB Docket No. 05-52, 21 FCC Rcd 1350 (released February 15, 2006) (the “*Report and Order*”).

¹⁴ See, *Motion for Stay, In re Application of Pittsburgh Television Station WPCW, Inc*, BPCDT-20060510AAI, filed June 8, 2006, at 1.

NPRMs proposing that the suggested amendments to the DTV Table of Allotments be adopted. Nonetheless, administrative errors by the Commission prevented the rulemaking proceeding commenced on October 23, 2001 from being completed and, despite continuing inquiries by CBS, a new rulemaking proceeding was not begun until almost three and a half years later.

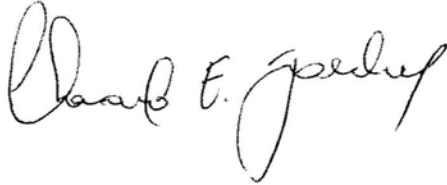
Following the effective date of the *Report and Order* on April 3, 2006, CBS promptly filed its application for construction permit. The Commission has not acted on that application, which has been opposed by Schrecongost. Despite the consequent lack of finality, CBS has already ordered and paid for WPCW's digital antenna, transmitter and transmission line. It has also completed a structural study to confirm that the tower on which the station's digital facilities are to be located can safely accommodate them. In short, CBS has done everything necessary to ensure that it will be able to proceed with construction as soon as it is authorized to do so.

The fact that CBS does not yet have a construction permit -- and has thus been unable to build the digital facilities of WPCW -- is entirely attributable to matters wholly beyond its control -- in the first instance, the administrative errors by the Commission that delayed for years a decision on its request for a change in its digital allotment (which the FCC ultimately approved) and, more recently, by the delays incident to administrative litigation. It would be manifestly unfair for WPCW's interference protection to be diminished because of these unavoidable circumstances.¹⁵

¹⁵ On August 5, 2005, CBS filed a request on behalf of WPCW for waiver of the "checklist facilities" requirement set forth in the *Second Periodic Review*. See, *Letter from Howard F. Jaeckel to Barbara Kreisman, Request for Waiver of Checklist Facilities Requirement, WNPA-DT, Jeannette, Pennsylvania*, dated August 1, 2005. That directive instructed stations not then holding a digital construction permit -- often because they had petitions for a change in their digital frequencies pending -- to apply for and build so-called "checklist facilities" in accordance with their initial allotments. In its waiver request, CBS noted -- in addition to the circumstances related above -- that because of the distance between WPCW's assigned digital frequency (Channel 30) and the one the FCC had proposed to substitute for it (Channel 49), it was doubtful that any equipment acquired for a Channel 30 operation could then be used for broadcasting on Channel 49. Moreover, CBS explained that, whether WPCW's facilities were ultimately constructed to operate on Channel 30 or Channel 49, it would involve removing existing transmission lines and antennas from the tower on which its facilities are to be located, thus adding greatly to the cost of a "checklist" construction.

In light of the above, we respectfully request that WPCW be granted a waiver of the Commission's "use it or lose it" deadline.

Very truly yours,

A handwritten signature in cursive script, appearing to read "David E. J. J. J.", written in black ink.

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ATTENTION: Shaun Maher, Room 2-A820

In these circumstances, CBS argued that it would be manifestly unfair to require the construction of "checklist" facilities for WPCW on Channel 30 before the FCC had acted on its request to change the station's allotment to Channel 49 – especially given the significant likelihood that the Channel 30 facility would be in use for an exceptionally short time. To date, the Commission has given no indication of dissatisfaction with the way in which CBS has proceeded.